Second Member of Council.—

The policy of Government has been explained already. The District Magistrates will study the situation and take suitable action.

Mr. H. C. Dasappa.—

Is it the intention of Government to uphold age-long *mamools* or to be neutral?

Second Member of Council.—

It all depends upon the circumstances of each case.

GOVERNMENT BUSINESS.

I. Bill to Amend the Criminal Tribes Regulation, VII of 1916.

THE SECRETARY TO GOVERNMENT, GENERAL DEPARTMENT, explained the general principles of the Bill as follows:—

The Criminal Tribes Regulation VII of 1916, is based on the British Indian Act III of 1911 as amended by Act X of 1914. The Act of 1911 was further amended by Act I of 1923 and the amendments therein were adopted in Mysore by Regulation X of 1925. The British Indian Act of 1911 has been replaced by Act VI of 1924 which has been subsequently amended by Act XXXIII of 1925.

The most important change made in British India is the addition made to Section 10 by the amending Act of 1925. It provides for the automatic application of the Regulation and the rules made thereunder where a member of a criminal tribe, in respect of which a notification under Section 10 has been issued, changes his residence to another district. It also provides for the transfer of the relevant entries in the register to the Superintendent of Police of the latter district.

The only other change of consequence brought about by the British Indian Act is in Section 23 which corresponds to Section 24 of the Mysore Regulation intended to make the meaning of the expressions "second conviction" and "third conviction" appearing therein clear and free from doubt.

It is desirable to bring our Regulation into line with the law in British India. It is therefore proposed to amend Regulation VII of 1916, adopting the substantial changes made in the Act in British India.

THE FIRST MEMBER OF COUNCIL added that one of the important changes proposed to be made was to define the date on which the new Regulation comes into force in place of the word "hereafter" appearing in Section 23 of the Regulation, with reference to a second and subsequent convictions; and the second change is meant to simplify the procedure in the matter of transferring the registration of a member of a criminal tribe from one district to another. The amendment was only an administrative measure and the changes proposed were not very material and had been adopted in British India. It was proposed to embody those changes in the Mysore Regulation also.

Thereupon the general principles of the Bill were approved by the House.

II. Bill Further to Amend the Code of Criminal Procedure, 1904.

THE SECRETARY TO GOVERNMENT, GENERAL DEPARTMENT, explained the general principles of the Bill as follows:—

Sub-section 8 of Section 526 of the Code of Criminal Procedure, 1904, as it stood prior to its amendment in 1927, provided that if, in any criminal case or appeal, before the commencement of the hearing, the Public Prosecutor, the complainant or the accused notified to the court before which the case or appeal was pending, his intention to make an application to the High Court for transfer of the case or appeal, the court should exercise the powers of postponement or adjournment given by Section 344 in such a manner as would afford a reasonable time for the application being made and an order being obtained thereon, before the accused was called on for his defence, or, in the case of an appeal, before the hearing of the appeal. Regulation VI of 1927 amended the sub-section so as to provide that if an application for transfer is made at any time in the course of any inquiry or trial, or before the commencement of the hearing of any appeal, "the court shall adjourn the case or postpone the appeal." It has been found that the practical working of this new procedure has lent itself to abuse and is calculated to defeat the ends of justice. If the accused notifies his intention to make an application to the High Court for transfer, the trial must be adjourned immediately. No discretion is given to the court by the section. There is no limit to the number of such notifications which may be given

during the course of any trial. Nor is there any obligation on the party who has notified his intention of moving the High Court to take any such action. The abuse of process which this sub-section makes possible has been pointedly referred to by Lort-Williams, J., in the case of Neamat Sha *vs.* Emperor (59 Calcutta 482). The abuse may obviously be aggravated to almost any extent, where there is a joint trial, and each accused person is represented by a different pleader. In the hands of reckless and irresponsible parties the section might become a serious instrument of deliberate obstruction of justice and waste of public time, bringing the administration of the law into contempt. There was a general consensus of opinion among judicial authorities in British India that these provisions needed amendment and it was amended by Act XXI of 1932. The Judges of our High Court who were consulted recommend the adoption of the amendment made in British India. The Bill proposes to restrict this unlimited power of the accused to obtain adjournments, by providing that when once an accused has secured an adjournment the court shall not be bound to adjourn on any subsequent intimation of an intention to apply for transfer made by that same party, and that where there are more than one accused, it shall not be possible for different accused by a series of successive intimations to secure a series of adjournments.

The Bill does not in any way affect the grounds on which criminal cases may be transferred as specified in sub-section (i) of Section 526, nor does it affect the right of any person concerned to make an application for transfer to the High Court at any stage of any proceedings as provided for in sub-sections (3) and (4) of the section.

The proposed amendment does not also restrict the power of the court to grant adjournments for any reasonable cause under Section 344.

Sub-section (6A) was inserted in the section by the same amending Regulation VI of 1927. It has been found difficult to assess the expenses reasonably incurred by the Government when it opposes an application for transfer inasmuch as the law officers of the Government are paid by salary and not by fees. To obviate this difficulty, sub-sections (5) and (6A) are proposed to be suitably amended.

Opportunity has also been taken for the substitution of the expression "Government Advocate" for the expression "Public Prosecutor" in sub-section (6) as there is no Public Prosecutor attached to the High Court in Mysore and it is the

Government Advocate that represents Government in all criminal proceedings before the High Court.

MR. G. CHANNAPPA enquired in how many instances the course of justice was obstructed by the accused asking for transfers a number of times.

THE FIRST MEMBER OF COUNCIL observed that there were a number of such instances. Lort-Williams had referred to the abuse of the administration of justice by the offenders being given an unlimited power to obtain adjournments and pointed out that in fact no conviction was possible without the concurrence of the accused. The judicial authorities in British India were of the opinion that the law needed amendment and it was accordingly amended by Act XXI of 1932.

MR. G. CHANNAPPA thought that that opinion might refer to political reasons.

THE FIRST MEMBER OF COUNCIL observed that it was not so, and that human nature all the world over was the same. When there was an opportunity to defeat the ends of justice, that opportunity would be seized. What was proposed to be done was to amend the Criminal Procedure Code to bring it into line with the law in force in British India. As a result of the proposed change, the courts would be bound to grant an adjournment of the case on the first application of the accused for transfer, and in the case of succeeding applications the discretion would vest in the court. The Judges of the High Court who were consulted in the matter recommended the adoption of the amendment made in British India and it was therefore proposed to amend the existing law.

MR. B. S. PUTTASWAMY was not in favour of the proposed amendment. When the accused had the right to make one application for transfer and the trial of the case could be adjourned till his petition was disposed of by the High Court, he did not see any reason why the same practice should not be followed in the case of his second and subsequent applications also. This was the only privilege or right that an accused enjoyed under the law and the Government themselves agreed that it should not be done away with. If that was so, he did not understand why the privilege should be extended once and not twice or thrice. So far as he knew, there were not many instances, so far as Mysore State was concerned, in which the course of justice was delayed as a result of the accused applying for transfer

a number of times. Because an amendment of this kind was passed in British India, it was no reason why Mysore also should do so. Before amending the existing law, it was necessary to find out whether there was an absolute necessity for it.

Continuing, Mr. Puttaswamy said that there was also another restriction under the proposed amendment. In cases where the accused numbered more than one, why should only one of them be allowed to enjoy the privilege and all the others denied the same? He was of the opinion that the existing law was quite all right, and he did not see any necessity for the proposed amendment.

MR. L. VEMA REDDY said that the accused, like the judges, belonged to the category of human beings and it was natural for the one sometimes to suspect the other. And where the accused suspected that there was room for miscarriage of justice, he might reasonably ask for a transfer. To punish an innocent man was worse than letting off a hundred criminals. So, if an honest man thought that the judge was prejudiced against him and therefore wanted that his case should be transferred from his file, it was not right to deny him the privilege.

THE DEWAN observed that there were many inconveniences under the existing law and it was found necessary to amend it.

MR. L. VEMA REDDY said that whereas the Government depended for their information on the reports of officers, the information of members of the House was based on practical experience and therefore the Government ought to give some weight to representations from the members. The proposed amendment curtailed the liberties of the accused and it was not right to refuse applications for transfer even if there were more than one accused.

MR. A. K. VENKATAVARADACHAR said that if the High Court disposed of transfer applications quickly, there would be no room for delay. He added that he was personally in favour of the amendment, but desired that a clause should be added in the Bill that the High Court must dispose of transfer applications promptly.

MR. M. S. LINGE GOWDA said that having been a Bench Magistrate, he had some experience of the delay caused by transfer applications and had known of some cases in which the accused went on putting in applications for transfer. If a Magistrate was strict, a number of such applications would come in and the advocates also would actively encourage

them. But the point to be remembered was that the other party would be put to unnecessary expenditure. So he would support the proposed measure.

MR. H. C. DASAPPA said that the Bill was a restrictive piece of legislation which sought to curtail the privilege of an accused and so the House would naturally be opposed to it. The legislation might perhaps be necessary in cases where the number of accused was great. If on the other hand, there was only one accused, much inconvenience would not be experienced by the courts even if he made more than one application for transfer. In fact, he was not aware of many cases where an accused had made more than one application for the transfer of his case from the file of one court to another with the avowed object of delaying the disposal of the case.

THE FIRST MEMBER OF COUNCIL observed that in the Mysore District itself there was a case under Section 352 in which there were six transfer applications from the accused and the case was pending for nearly 2½ years.

MR. H. C. DASAPPA said that it must have been a solitary instance of the kind. At any rate, even if the legislation was introduced, he was particular that this power should be given only to stipendiary Magistrates and not to others.

He pointed out that the object of the Bill had not been clearly explained in the statement and the oft-repeated request of the members that a statement containing both the existing provisions as well as the proposed changes side by side had not been complied with. It was not clear to him from the statement whether in the case of a first application for transfer, the party would not be asked to execute a bond.

THE FIRST MEMBER OF COUNCIL replied in the negative. He added that the consent of the House was asked for only in respect of the statement placed before it.

MR. H. C. DASAPPA said that it was not clear to him whether the legislation proposed to be introduced would be a replica of what was recently introduced in British India and whether, along with the second or subsequent applications of the accused for transfer, he would be asked to furnish a bond agreeing to pay compensation for losses to the other party. Unless he had definite information on some of those points, it was not possible for him to vote one way or the other.

THE FIRST MEMBER OF COUNCIL observed that the Act would be suitably amended to meet local conditions. For example, the words "Public Prosecutor" would be replaced

by the words "Government Advocate." As regards the execution of the bond in the case of second or subsequent applications, the Member invited the attention of Mr. Dasappa to Section 526 (6) (*a*) which laid down that when an accused made an application under that section, he might be asked to execute a bond with or without sureties.

MR. H. C. DASAPPA said that that section related to *costs* and enquired whether there was any provision for *compensation* and if so to what extent.

THE FIRST MEMBER OF COUNCIL replied that in the proposed amendment, the word "compensation" would be put in place of the word "costs," to make the meaning clear, and "such sum not exceeding Rs. 250 as he may consider proper under the circumstances of the case" for the words "any expenses reasonably incurred by such person in consequence of the application."

MR. H. C. DASAPPA said that he would oppose the amendment regarding the compensation. He also added that it was not clear to him whether, in the case of appeals, the accused would be asked to execute bonds for first applications also or for second or subsequent applications only.

THE FIRST MEMBER OF COUNCIL observed that there was no change in the existing procedure so far as appeals were concerned. Appeals and original cases were treated alike and there was no difference. Whether it was an appeal or an original case, so far as the first application for transfer was concerned, the court would be bound to give the adjournment. In subsequent applications, the discretion to grant time or not would vest in the court.

MR. H. C. DASAPPA said that he was aware of the necessity for an amendment of this kind, for, in cases where there were more than one accused, some one or another would go on asking for transfers. But while supporting it, he appealed to Government that in actual working, Government must be very sympathetic and that this power must vest only in stipendiary Magistrates and not in others.

Khan Bahadur MAHOMED ABBAS KHAN said that the object of the amendment seemed to be that if the first application for transfer was rejected, further applications from one and the same accused should not be entertained. He thought that it was not right to curtail the rights of the accused in that manner.

THE FIRST MEMBER OF COUNCIL observed that that was not the object of the amendment. Since 1927, the accused had the privilege of asking for transfer a number of times

and every time the case had to be adjourned. With a view to avoid that and to secure speedy disposal of cases, it was proposed to change the existing law. Under the new arrangement, the court would be bound to adjourn the case when the accused asked for a transfer for the first time and in the case of second or subsequent applications, the discretion would be left to the court to grant adjournments or not.

MR. K. T. BHASHYAM AIYANGAR, while agreeing that the object of the amendment was good, said that the proposed amendment had its own defects. While trying to remove certain inconveniences now existing, the Government were creating new inconveniences to the accused by the proposed amendment. When once the accused applied for transfer, he would have no chance of his second or subsequent applications being entertained. That was one thing. Another thing was that if in the course of the trial another accused had reason to believe that the presiding officer was not well disposed towards him, he would lose the chance of trying for a transfer simply because some one else had tried for it earlier. Or it might be that the officer granting the first transfer application was replaced by another officer. The accused might have reason to think that that officer was not well disposed and might therefore ask for a transfer. But on the ground that his predecessor had once adjourned the case, the officer succeeding might not entertain the petition. In these ways, the rights of the accused would be curtailed.

THE FIRST MEMBER OF COUNCIL observed that no inconvenience would be caused by the proposed amendment. Nobody would refuse adjournment on reasonable grounds. It was only right to presume that the Magistrates would do justice to the accused. For the first application, the Magistrate was bound to give adjournment, but for the second and subsequent applications, he would use his discretion. That was all that the amendment meant. After all, the members could trust the Magistrates to use their discretion justly and fairly.

MR. K. T. BHASHYAM AIYANGAR said that in that case the question of granting time even in the case of the first application might as well be left to the discretion of the Magistrate. The fact of the matter was that Magistrates also were ordinary human beings and were as likely to err as anybody else. He therefore added that in cases where there were a number of accused, each one of them should have a chance of applying for transfer though the same

accused might or might not be granted opportunities to make subsequent applications.

THE FIRST MEMBER OF COUNCIL observed that, at that rate, if in a case there were about 30 or 40 accused, there would be no chance of proceeding with the case at all.

MR. K. T. BHASHYAM AIYANGAR said that such cases would naturally be few and far between. And even granting that there were some such cases, he did not see the justice of granting permission to one of the accused and refusing the same to all the others. For these reasons he suggested that in the last sentence of the first para of the statement, the word "party" be replaced by the word "person" and the comma following it by a full-stop, the rest of the sentence being deleted. He thought that the slight amendment suggested by him would meet the requirements of the case.

MR. T. MARIAPPA said that the proposed amendment restricted the rights of the accused. From 1904 to 1927 the accused had not had the privilege of making an unlimited number of applications for transfer of their cases. After a great deal of consideration and with the advice of the High Courts in British India, the law was amended, and this privilege was given to the accused with a view to give them all possible chances of proving their innocence. The same law had been brought into force in the Mysore State also. It was only six years since that privilege was granted and during this period there was no reason to believe that the privilege had worked prejudicially to the interests of justice. It might be that in British India, owing to the change in political conditions, some necessity had been found to amend the law. But there was no such reason for amending the law in the State. Merely because the law had been amended in British India, it need not be done here also. Very often, even without applications for adjournment, cases were adjourned from time to time and no action was being taken against those responsible for it. Where, then, was the necessity to curtail the liberties of the accused, though it be in the name of speeding up justice?

The member was also not in favour of replacing the word "cost" in the original Regulation by the word "compensation" as there was great difference between the two and the parties were sure to suffer.

MR. B. SITHARAMA RAO said that he could not see any reason why more than one application from the same accused should not be entertained if really they were based on

different grounds. He also urged that a time limit be fixed for the disposal of transfer applications by the High Court.

At this stage, the House adjourned for lunch and re-assembled at 3-30 p.m.

MR. N. G. SANJIVIAH who opposed the Bill said that he was not convinced that it would result in speeding up justice. As regards the question of payment of compensation to the other party if an accused prayed for an adjournment; he asked what compensation was paid to the parties when the court itself adjourned a case in spite of the presence of all the witnesses and parties to a suit. Again, the members were asked to trust to the discretion of the Magistrates in respect of granting subsequent transfer applications. On that point, the speaker could not bring himself to believe that the trying Magistrates generally used their discretion properly, himself having been fined Rs. 100 for building a house somewhat contrary to a license. Simply because the necessity for the amendment was felt by a Calcutta court, it was not sufficient justification for introducing it in Mysore also.

Government had not furnished facts and figures to show that anybody's interests had suffered under the existing law. Since both judicial and executive functions were combined in some of the trying Magistrates, it was possible that the need for a second transfer might be felt by the accused, and it would serve as a hardship if he be deprived of a legitimate right by means of the proposed amendment.

For these reasons, he did not believe that the Bill was a beneficent measure and he requested the Government to withdraw it.

MR. MIR MAHOMED SAHIB also expressed himself against the proposed amendment. He said that it aimed at depriving the accused of the only existing facility. It would be wrong to presume that transfer applications would always be filed on frivolous grounds, and it would be unjust to deny the right of transfer to one accused simply because it had been obtained already by another accused in the same case.

MR. ABDUL AZIZ supported the amendment. He admitted that if frequent transfers were allowed, the disposal of cases would be unduly delayed. By obstructive tactics like frequent applications for adjournments, the accused could get time even to try to prevent the appearance of prosecution witnesses at subsequent hearings and this Bill was sure to prevent such contingencies.

MR. D. S. MALLAPPA thought that the Code of Criminal Procedure as amended in 1927 had rectified the defects in the old Regulation, and that there was no need for the proposed amendment. All the accused in a case might not have common interests and different accused persons might entertain apprehensions at different stages of the trial. And if one of them made the first application at one stage, that was no reason why the other accused persons should forego the right throughout the rest of the trial. The inconvenience complained of in the Bill was very uncommon in the State. He did not believe that transfer applications were being made on frivolous grounds. Such applications would prejudice the trying Magistrate and no accused would take that risk for nothing. He therefore thought it was not desirable to alter the existing law on the subject.

MR. VENKAPPA expressed himself in agreement with the views of the previous speaker and added that under the proposed amendment, if the first application for transfer came to be rejected because it had been made on frivolous grounds, the other accused could not exercise that right even on reasonable grounds.

MR. MAHOMED IMAM said that Section 526 was the only section in the whole Criminal Procedure Code which gave some rights to the accused; every other section went to help only the prosecution. Ordinarily no obstruction would be caused to the course of the trial where only a single accused person was concerned. So the amending Bill would not affect such cases; and cases in which the number of accused persons was large were few and far between. In such cases, it might be that such of the accused as were guilty would frequently file applications for transfers just to defer conviction. The result would be that all the other innocent persons who might have been involved in the case somehow and who naturally would be anxious that the case should be disposed of very early, would also have to continue under custody. The amending Bill provided for such cases and so he strongly supported the measure.

MR. M. P. SOMASEKHARA RAO endorsed the views expressed by Mr. K. T. Bhashyam Aiyangar in opposition to the Bill. It seemed to him that Government suspected that where there were a number of accused, they would make a common cause and try to hinder the course of the trial. But to his knowledge no such incident had occurred in the State. It was not always that all the accused would be found guilty; many would get discharged in the preliminary stage itself. The single

transfer contemplated in the Bill might affect prejudicially the persons whose innocence had yet to be established.

As regards the contention that the Bill did not preclude a Magistrate from giving subsequent transfers, the speaker pointed out that generally transfers were applied for on the presumption that the Magistrate might be prejudiced against the accused. If that presumption was correct, it would be too much to expect the Magistrate to view the transfer application with favour. Thus there was no use counting upon the discretion of the Magistrate. He therefore thought that the right of applying for transfers must remain open to all the accused persons.

MR. GURUSWAMI GOWDA pointed out that it was evident from the speeches made that there was a consensus of opinion among the representatives of the people that the proposed amendment was detrimental to the interests of the persons concerned. He too was not convinced that Government had felt any inconvenience under the existing section of the law. And simply because this amendment was made in the British Indian Code, it did not follow that the same should be adopted here. He therefore prayed that the Bill be withdrawn by Government.

In summing up the discussions on the Bill, the FIRST MEMBER OF COUNCIL confessed that he had not anticipated such a prolonged discussion on a simple amendment and that was why the principles of the Bill were not explained in greater detail in the first instance. It seemed to him that many of the members who had spoken had not understood the object of the measure and he therefore further explained it as follows :—

In the first place, if the case for the prosecution was strong, it was natural for the accused to employ obstructive tactics in all ways possible. It was not the duty of the members to hold a brief for such people. As pointed out in the very first paragraph of the Dewan's Opening Address, as the representatives of the people they had come together "to take their part in the Government of the State." In regard to the administration of justice, the main concern of the Assembly should be to ensure speedy justice and see that the ends of justice were not defeated. They should not consider how best they could help the accused under any circumstances. By this he did not mean that any legitimate facility for the accused should be withdrawn.

Referring to the criticism that the Government merely wanted to copy the amendment from British India, the

speaker said that it was far from it. The fact of the matter was that one of the District Magistrates had complained and furnished facts and figures to show that cases were being needlessly prolonged owing to the obstructive tactics which the present law enabled the accused to adopt.

He had already referred to a case of simple assault the trial of which had been prolonged for $2\frac{1}{2}$ years and applications for transfer had been filed six times. There were a a good many cases of this description. When these cases were brought to the notice of Government, they enquired whether the same difficulty had not been experienced in British India also and came to know that it was so and that the law had been amended there. The circumstances being similar in Mysore, the British Indian amendment was proposed to be adopted here also.

Under the present law, if an accused person merely intimated the court that he intended to apply to the High Court for the transfer of the case, it was obligatory on the trial court to adjourn the case for such period as would afford reasonable time for an application to be made and orders obtained thereon. And curiously enough, there were instances where the accused, after obtaining adjournments under the section from the trial court, had not approached the High Court at all.

The Member next referred to the question whether any loss was sustained by the Government under the existing section and said that Government stood neither to lose nor to gain and all that the amendment aimed at was to prevent the abuse of the privilege of asking for transfer. It was meant to benefit the public at large.

On the question of compensation on account of which Messrs. Dasappa and Sanjiviah said that there was room for certain doubts, the Member made it clear that the point did not arise at all as the Bill did not aim at making more revenue to the State. As regards the costs, there was difficulty in assessing them properly where the Government Advocate, who was paid by salary and not by fees, appeared for opposing an application for transfer. But such matters of detail might be left to be considered by the Legislative Council.

As regards the suggestion that the amendment should be made applicable only to Stipendiary Magistrate Courts and not to Bench Courts, the Member said that cases that went before Bench Courts were very simple ones, and if a transfer application was filed in respect of them, the District Magistrate could himself pass final orders. So there was no

need to make an exception in the case of Bench Courts, and to oppose the Bill on that ground did not appear to him to be reasonable.

Another objection advanced against the amendment was that when once a transfer application made on flimsy grounds was rejected, there would be no scope for another accused in the case to apply for transfer even on reasonable grounds. As regards this, the speaker said that even granting that the trying Magistrate had a prejudice, it would become patent sufficiently early and all the accused could make common cause and file a transfer application together. In fact, that was the principle on which the proposed amendment was based. But if the ends of justice were likely to be defeated by the Magistrate refusing to grant the application, it would be perfectly open to the accused to go in appeal to the High Court and get a stay order.

The Member thought that it was not correct to argue that the troubles experienced in the Calcutta court would not be repeated in Mysore. The same section was common to the Calcutta Court as well as to the courts in Mysore and in one and the same soil the same seed must produce the same plant; if the inconveniences experienced in both places were common, the remedy also must naturally be common. He therefore appealed to the members to vote for the amendment.

MR. K. T. BHASHYAM AIYANGAR said that if only the Government had accepted the amendment suggested by some of the members, the House would have passed the principles of the Bill. But Government failed to appreciate the difficulties of the litigant public.

THE FIRST MEMBER OF COUNCIL replied that if any member thought that obstructive tactics were the privilege of everybody, he would be sorry for it. On the whole the Bill aimed at preventing obstructive tactics which were being actually indulged in by the accused and so it deserved the support of the Assembly.

The motion was then put to vote and *lost*, only 19 voting for and the rest against.

REPRESENTATIONS.

No. 1. —Fixing the scales of pay of Government servants.
Mr. G. Girimaji Rao, Kolar Taluk.

MR. G. GIRIMAJI RAO represented that the existing scales of pay were fixed long ago with reference to the level